IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 551 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

RASIDKHANJI KAMAKHANJI

Versus

MALEK BISMILAKHANJI

Appearance:

MR MEHUL S SHAH for Petitioner

MR BJ JADEJA for Respondent No. 1

MR ST MEHTA APP for Respondent No. 2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 10/03/2000

ORAL JUDGEMENT

This application under Section 482 of the Code of Criminal Procedure prays to quash and set aside the proceedings of Criminal Case No.199 of 1986 pending in

the Court of the learned First Class Magistrate, Bajana. The original complainant is joined as a party Respondent No.1 who has not filed any reply affidavit. It has been stated by his learned advocate that he has expired during pendency of this petition.

2. It is submitted by the learned advocate appearing for the petitioner Mr.Mehul S.Shah that, as stated in the petition, the original complaint is related to the right of inheritance over the amount lying in the joint account of the petitioner and the deceased father of the complainant. It is further submitted that a civil suit against the petitioner in the Court of the learned Civil Judge (S.D.) at Surendranagar, being Special Civil Suit No.86 of 1987, is also instituted by respondent No.1 on practically the same facts and averments. Going through the complaint and copy of the plaint in the said civil suit, it appears that the common grievance of the original complainant is as regards withholding of the amount over which the complainant has a claim. The claim and the legal right of the complainant will be decided by the Civil Court in the civil suit. In view of these facts, an offence under Section 408 or Section 406 is not made out in the complaint as submitted by Mr.Shah.

3. It is further submitted that, as held by the Hon'ble Supreme Court in the case of G. SAGAR SURI v. STATE OF U.P. [2000 (1) SCALE 271], if a conclusion is reached that allowing the criminal proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceedings are to be quashed, then, in exercise of the wholesome power under Section 482 of the Cr.P.C., the High Court is entitled to quash the proceedings. It is also held that, if a matter is essentially of civil nature and has been given a cloak of criminal offence, the criminal proceedings are not a short cut of other remedies available in law and, in such cases, the High Court may exercise its jurisdiction under Section 482 of the Cr.P.C. to prevent the abuse of the process of any Court.

4. Considering the submissions as above and going through the record of this application, it is seen that, on substantially the same facts and averments, a complaint as well as a special civil suit is filed by the complainant and there is a dispute of civil nature which involves matter of inheritance. In this view of the matter, as no case under Section 406 or Section 408 of the Cr.P.C. is made out either in the complaint or the statement recorded below it, and as this aspect is lost sight of in the orders to issue process by the learned

Magistrate, it is a fit case for exercising the powers under Section 482 of the Cr.P.C. The learned Additional Public Prosecutor appearing for the State has supported the contention of the petitioner. The application is, accordingly, allowed and the process and proceedings in Criminal Case No.199 of 1986 pending before the learned First Class Magistrate, Bajana is quashed and set aside. Rule is made absolute with no order as to costs.

Sd/-
(KMG Thilake)

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